

Application No. 10/072,149  
RCE and Amendment dated July 9, 2003  
Reply to Office Action of April 9, 2003

**Remarks/Arguments**

The above-identified application has been carefully reviewed and amended in light of the Examiner's communication (office action) mailed April 9, 2003, and in light of a telephone interview between Examiner, Examiner's supervisor and the undersigned applicant's representative on May 29, 2003, summarized in an Interview Summary mailed on May 30, 2003. The substance of the Interview was the proposed amended claims, sent by facsimile to the Examiner on May 27, 2003, in light of the Lancaster and Granite Seed reference. The Examiner stated that the proposed amendment raises new issues and so would not be entered. Examiner also brought to the attention of the undersigned, Whitbeck, U.S. Patent No. 6,141,993, the substance of which was not discussed in the Interview.

A Request for Continued Examination and required fee is being filed herewith.

Applicant has amended claims 1, 4, 5, 14, 16, 19 and 20, and has added new claims 23-26 in order to more clearly define the present invention over the prior art.

In particular, claim 1 has been amended to clarify the erosion control system of the present invention as comprising a flexible matting including a core layer formed of a fiber matrix comprising randomly oriented fibers, the fiber matrix forming a substantially flat upper surface and a substantially flat lower surface, and a permanent upper layer bonded to the substantially flat upper surface of the core layer.

Applicant has amended claim 14 in order to more clearly define another embodiment of the present invention which provides an erosion control system comprising a flexible matting comprising a core layer formed of a fiber matrix consisting essentially of

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Sudan grass.

Applicant has amended claim 19 in order to more clearly define another embodiment of the present invention which provides an erosion control system comprising a flexible matting comprising a core layer formed of a fiber matrix consisting essentially of rice straw fibers.

In the latest office action, the Examiner has rejected claims 1, 9-11 and 12 under 35 U.S.C. 102(b) as being anticipated by Lancaster, U.S. Patent No. 5,849,645. Applicant traverses this rejection as it pertains to the present claims.

The presently claimed erosion control systems comprise, as defined in presently amended claim 1, a flexible matting including a core layer formed of a fiber matrix forming a substantially flat upper surface and a substantially flat lower surface, and a permanent upper layer bonded to the substantially flat upper surface.

Applicant respectfully submits that it is well known that to anticipate a claimed invention under 35 U.S.C. 102, a reference must disclose each and every element of the claim at issue and the elements of the claim must be arranged in the same way to achieve the same result which is asserted to be the inventive function.

Applicant submits that Lancaster does not disclose, teach or even suggest the present invention as defined in the present claims, as amended. For example, Lancaster does not disclose, teach or even suggest an erosion control matting comprising a core layer formed of a fiber matrix in which the fiber matrix forms a substantially flat upper surface and a substantially flat lower surface.

In view of the above, applicant submits that the present claims are not anticipated by Lancaster under 35 U.S.C. 102(b).

The Examiner has rejected claims 2-8 under 35 U.S.C. 103(a) as

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being unpatentable over Lancaster as applied to claim 1. Applicant traverses this rejection as it pertains to the present claims.

Again, Lancaster does not disclose, teach or suggest the present invention as defined in the presently amended claims. Unlike the present invention, Lancaster discloses a reinforced composite matting having a three-dimensional, cusped, fiber core 20 defined by parallel ridges and troughs. This feature of Lancaster is disclosed throughout the specification and is an important feature of Lancaster. Moreover, Lancaster provides no incentive or motivation to a person of ordinary skill in the art to modify the Lancaster device to provide an apparatus in which the fiber matrix has a substantially flat upper surface and a substantially flat lower surface, as recited in the present claims. In fact, Lancaster directly teaches away from this feature of the invention, in that Lancaster discloses, without exception, that the fiber filler of the matting is always a cusped, three-dimensional structure, having an upper surface defined by ridges and troughs. The intended purpose of the three dimensional surface of the Lancaster fiber filler is to trap mulch, sediment and plant litter. (See, for example, Lancaster at column 4, lines 56-63, and column 5, lines 59-65).

Applicant submits that, even if the Lancaster system were to be erroneously modified such that it included a substantially planar fiber matrix without substantial three dimensional features, such a modification would render the Lancaster system clearly unsatisfactory for its intended purpose, i.e. for trapping mulch and sediment within the three-dimensional surface cuspedations. Indeed, Lancaster discloses that the matting is designed to reduce the possibility that the three-dimensional features will be flattened upon installation of the lining; see Lancaster column 6, lines 4-9.

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In view of the above, applicant submits that the claims as amended are unobvious from and patentable over Lancaster under 35 U.S.C. 103.

The Examiner has rejected claims 14-16 and 18-22 under 35 U.S.C. 103(a) as being unpatentable over Lancaster in view of Granite Seed Company 1999-01-28 (on-line).

Applicant submits that the Granite Seed Company reference does not, even when combined with Lancaster, define an erosion control matting comprising a core layer consisting essentially of Sudan Grass (see amended claim 14). Similarly, the Granite Seed Company reference does not, even when combined with Lancaster, define an erosion control matting comprising a core layer consisting essentially of rice straw (see amended claim 19).

In view of the above, applicant submits that claims 14, 16 and 18-22 are not anticipated by and are unobvious from Lancaster in view of the Granite Seed Company reference under 35 U.S.C. 103(a).

Although no rejection of the claims has been presented based on the Whitbeck reference, applicant will now briefly address the patentability of the presently claimed invention over the Whitbeck reference.

Applicant submits that Whitbeck, considered alone or in any combination with the Lancaster reference and/or the Granite Seed Company reference, does not disclose, teach or even suggest the present invention claimed in presently amended claims 1-12.

For example, Whitbeck does not disclose, teach or even suggest an erosion control matting comprising a core layer formed of a fiber matrix and a permanent upper layer bonded to the core layer, as recited in the present claims.

Whitbeck's lawngrass mat comprises an inner layer of living lawngrass sprigs sandwiched between layers of biodegradable netting. See, for example, Whitbeck column 1, line 64, column 2,

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lines 41-44.

In addition, Whitbeck does not disclose, teach or even suggest the present invention claimed in presently amended claims 14, 16 and 18-22.

Whitbeck does not disclose, teach or even suggest an erosion control matting including a core layer consisting essentially of Sudan grass or an erosion control matting including a core layer consisting essentially of rice straw fibers.

In view of the above, applicant submits that the present invention is patentable over Whitbeck.

Furthermore, each of the present dependent claims is separately patentable over the prior art. For example, none of the prior art, taken singly or in any combination, disclose, teach or even suggest the present systems including the additional feature or features recited in any of the dependent claims. Therefore, applicant submits that all of the present claims are separately patentable over the prior art.

In conclusion, applicant submits that claims 1-12, 14, 16, and 18-22 are allowable and respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Respectfully submitted,



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